

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

NOAH J. MCCOURT  
Plaintiff,

v.

CITY OF MINNEAPOLIS, a public entity,  
BIRD RIDES, INC., a Delaware corporation,  
d/b/a BIRD; NEUTRON HOLDINGS, INC., a  
Delaware corporation, d/b/a LIME

CASE NO:

19cv2717 JRT/TNL

COMPLAINT FOR DECLATORY  
AND INJUNCTIVE RELIEF

DEMAND FOR JURY TRIAL

RECEIVED

OCT 16 2019

CLERK, U.S. DISTRICT COURT  
MINNEAPOLIS, MINNESOTA

INTRODUCTION

1. This action challenges the failure of the City of Minneapolis and private companies to maintain the accessibility of the City's public sidewalks, curb ramps, crosswalks and transit stops for people with disabilities, in the face of an onslaught of unregulated dockless scooters. Private scooter companies have been allowed to appropriate the public commons for their own profit, regardless of the impact on the City's residents. Persons with mobility impairments, including people who use wheelchairs or walkers, and people with significant visual impairments are thereby being denied their right to travel freely and safely on our public walkways.
2. Without full use of the sidewalk and curb ramps at street intersections, persons with mobility and/or visual impairments have significant barriers in crossing from a pedestrian walkway to the street. This is exacerbated when the sidewalk itself is full of obstructions and no longer able to be fully and freely used by people with disabilities.
3. When dockless scooters are left in the middle of the sidewalk and other rights of way, at points of ingress and egress, they block off access to the public rights of way; furthermore, as Defendants

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know, the dockless scooter riders often ride the Scooters on the sidewalk, turning the sidewalk into a vehicle highway rather than a space for safe pedestrian access and use

4. On July 26, 1990, Congress enacted the Americans With Disabilities Act (ADA), ADA §§ 2 et seq. [42 U.S.C.A. §§ 12101 et seq.], establishing the most important civil rights for persons with disabilities in our country's history, including the right to have full and equal enjoyment of services, programs, or activities of a public entity.
5. Congress explicitly stated that the purpose of the ADA was to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. 42 U.S.C. §12101(b)(1)-(2). Congressional statutory findings include: "historically, society has tended to isolate and segregate individuals with disabilities, and despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem"; "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services"; "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers"; and, "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. § 12101.
6. In the House Report accompanying the ADA, Congress expressly noted that the "employment, transportation, and public accommodation sections of [the ADA] would be meaningless if people, who use wheelchairs were not afforded the opportunity to travel on and between the streets." See H.R. Rep. No. 101-485(II), at 84, reprinted in 1990 U.S.C.C.A.N. 303, 367.
7. Congress gave public entities, including state and local governments, 18 months to implement the ADA. By January 26, 1992, the effective date of the ADA, all public entities had to comply with the statutory and regulatory provisions of the ADA.

8. Nevertheless, instead of complying with the ADA, Defendants have failed to maintain and respect the public sidewalks of the City of Minneapolis in a way that allows for disabled residents to enjoy unencumbered access. People with disabilities who wish to travel in the City using the City's walkways are being forced to either put their physical safety at risk or just stay home. This is not a choice that they should have to make.
9. The Plaintiff hereby moves against the City of Minneapolis (the "Municipal Defendant"), and Neutron Holdings, Inc. a Delaware corporation doing business as Lime ("Lime"), and Bird Rides, Inc., a Delaware Corporation, Inc. d/b/a Bird ("Bird")(collectively, the "Scooter Defendants").

### **VENUE AND JURISDICTION**

10. The claims alleged herein arise under the Americans with Disabilities Act (42 U.S.C. §§ 12131 et seq.), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 et seq.), such that the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1343. Through the same actions and omissions that form the basis of Plaintiff's federal claims, Defendants have also violated Plaintiff's rights under state law, over which this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. This Court has jurisdiction over Plaintiff's claims for declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202 and Rule 65 of the Federal Rules of Civil Procedure.
11. Venue over Plaintiff's claims is proper in the District of Minnesota because the Municipal Defendant resides in the District of Minnesota within the meaning of 28 U.S.C. § 1391, and because the acts, events, and omissions giving rise to Plaintiffs' claims occurred in the District of Minnesota.

### **PARTIES**

12. Plaintiff McCourt is a well-known advocate in the areas of mental health and disability rights. He was appointed by Minnesota Governor Mark Dayton to the Governor's Council on

Developmental Disabilities. He also serves as the Chair of the State Subcommittee on Children's Mental Health. He also serves on the Steering Committee of the Governor's Council for Diversity and Inclusion. He sits on the board of directors of both the Minnesota Association on Children's Mental Health and Move Minnesota (previously known as Transit for Livable Communities). He also serves on the Public Policy Committees of ARC Minnesota. His expertise led him to speak before the United Nations in March of 2016. He also formerly served as a commissioner on the Chaska Human Rights Commission.

13. The Plaintiff is diagnosed with Autism Spectrum Disorder and Developmental Coordination Disorder. As a result of his diagnoses, he experiences challenges performing activities requiring the exercise of fine and gross motor skills. His reaction time is slower than an average, non-disabled person – yet, every single day, the Plaintiff finds himself dodging scooters on sidewalks and street crossings which come at him from all directions at rapid speeds without warning. The Plaintiff has also repeatedly tripped over Scooters left along the streets and sidewalks. Most recently, the Plaintiff tripped over a scooter while exiting the light rail leaving him with a large bruise on his leg. The Plaintiff is a “qualified person with a disability” and/or a person with a “disability” within the meaning of all applicable statutes and regulations including 42 U.S.C. § 12131(2), 28 C.F.R. § 35.104; 28 C.F.R. § 36.104; 29 U.S.C. § 705(2)(B), and MINN. STAT. 363A

14. Defendant Neutron Holdings, Inc. d/b/a LIME (“Lime”) is a for-profit corporation which rents Lime Scooters (defined below) to Lime Customers (defined below) through the Lime App (defined below). Lime is a Delaware corporation, with its principal office located at 66 Bovet Rd, Suite 320, San Mateo, California 94402
15. Defendant Bird Rides, Inc. d/b/a BIRD (“Bird”) is a for-profit corporation which rents Bird Scooters (defined below) to Bird Customers (defined below) through the Bird App (defined below). Bird is a Delaware corporation, with its principal office located at 406 Broadway, #369, Santa Monica, California 90401.

16. Defendant City of Minneapolis is a public entity within the meaning of Title II of the Americans with Disabilities Act (the "ADA") and on information and belief, has received federal financial assistance within the meaning of Section 504 of the Rehabilitation Act, 29 U.S.C. §794, et seq. (the "Rehabilitation Act"). Defendant City of Minneapolis has also received federal and state financial assistance sufficient to invoke the coverage of Section 504 of the Rehabilitation Act.
17. Defendant City of Minneapolis is a local government entity with the responsibility of providing the Plaintiff access to its public facilities, programs, services and activities. Defendant City of Minneapolis is responsible for maintaining and regulating the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways within the City of Minneapolis.

#### **FACTUAL ALLEGATIONS**

18. The City of Minneapolis has failed to adequately maintain the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways, by allowing dockless scooters used primarily for recreational purposes to proliferate unchecked throughout Minneapolis and to block safe and equal access for people with disabilities who live in or visit the City. Defendant City of Minneapolis has thereby denied the Plaintiff the benefits of the City's services, programs, and activities based on his disability.
19. The Scooter Defendants have used and appropriated varying portions of the City's public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and walkways with impunity for their own private profit – effectively turning them into their private retail stores, showrooms, highways, and storage facilities -in abject disregard for the safety and access rights of residents or visitors with disabilities to the City of Minneapolis.
20. Bird rents electric scooters ("Bird Scooters") to its customers ("Bird Customers") through a mobile application (the "Bird App"). Travis VanderZanden, Bird's CEO, stated on or about October 9, 2018 that "[w]e don't go to New York because it's technically illegal to use a scooter at

the state level” and that “[w]here there's no laws, that's where we go in.” See “Bird CEO: ‘The Places Where There Are No Laws, That’s Where We Go In’”, Fortune, at <http://fortune.com/2018/10/09/bird-ceoscooters-laws/>, last accessed January 5, 2019 at 11:22 A.M.

21. Lime also rents electric scooters (“Lime Scooters”, together with Bird Scooters and Razor Scooters, hereinafter, collectively, “Scooters”) to its customers (“Lime Customers”, together with Bird Customers and Razor Customers, hereinafter, collectively, “Scooter Customers”) through a mobile application (the “Lime App”, together with the Bird App and the Razor App, hereinafter, collectively, “Scooter Apps”).
22. Scooters present obstacles and block full access and use of the sidewalk when left on the ground. Across the City of Minneapolis, idle scooters clog the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways.
23. Perhaps even more dangerous, Scooter Defendants enable or recklessly allow Scooter Customers to drive Scooters at speeds much faster than the speed of foot traffic through the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways, despite the Minnesota Vehicle Code’s prohibition against operation of a motorized scooter upon the sidewalks. Effectively, the practice turns the systems of sidewalks into a Scooter highway.
24. Once a Scooter Customer is done using the Scooter, Scooter Defendants permit and/or recklessly enable the Scooter Customers to leave the Scooters anywhere the user may see fit, as part of their “dockless” business model – typically, idle Scooters end up on public property in the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways, either on the ground, parked upright, or left resting sideways blocking portions of the systems of sidewalks and rights of way. Groups of Scooters may be discarded in close proximity, causing a blockade and diminishing full use of the sidewalks for pedestrians.
25. This “dockless” business practice violates Minneapolis Ordinance 95 which prohibits encroachment on “streets, alleys and public right of ways.” While the City has historically

vigorously enforcing this provision against homeless individuals. It has intentionally or recklessly overlooked the egregious actions of the Scooter Defendants and their severe negative impact on disability access.

26. To continue appropriating and re-purposing sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings in the City of Minneapolis, the Scooter Defendants hire independent contractors to tend to any Scooters with any kind of maintenance need, including battery exhaustion, before returning the Scooters to the system of public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways.
27. Scooters cause barriers in paths of travel when they are operated. Scooters are operated on the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways. The Scooters are motor powered, propelling them at speeds around twenty (20) miles per hour, or more. Defendants do not require any training or education for people to ride Scooters. The combination of high relative speeds, compared to pedestrians, and lack of restrictions regarding the operator, creates hazardous conditions which causes the Plaintiff and others with disabilities, frustration, and risk of serious physical harm. The Plaintiff, should he waver trying to access the benefits of the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways, do so in a state of hypervigilance and stress as the concern of being struck and possibly injured by a wayward scooter persists.
28. The Scooter Defendants hinder and inhibit the Plaintiff from using the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways, and have actually caused the Plaintiff to use the sidewalks less often. As in-use Scooters speed by and deny safe, equal and full access to the sidewalks, and as idle Scooters occupy, partition, and block the sidewalks and other pedestrian rights of way, the sidewalk has become inaccessible, dangerous, and much more difficult to trust as a walkway. As a result of the difficulty and frustration with the experience of attempting to use the sidewalks and other pedestrian rights of way and fear of

injury, the Plaintiff is disheartened and deterred from using the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways.

29. The Scooter Defendants' burgeoning proliferation and uncurbed growth comes at the detriment of the rights of all disabled persons with mobility and/or visual impairments who are residents and visitors of the City of Minneapolis, causing the Plaintiff injury and severe anxiety, diminishing their comfort and discriminating against them based on their disabilities by denying them access to and safe use of public walkways and other essential public services, resulting in isolation in their homes and deterioration in Plaintiff's overall quality of life.
30. The Municipal Defendant is responsible for maintaining the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways, which constitute an essential government program, service, and activity for residents and visitors of the City of Minneapolis.
31. The Municipal Defendant is responsible for providing public transportation for residents and visitors to the City of Minneapolis, which constitutes an essential government program, service and activity for residents and visitors of the City of Minneapolis
32. The Municipal Defendant has further failed to maintain the system of sidewalks and rights of way in a fashion that ensures that access is not only assured to all residents and visitors with disabilities, but also that allows residents and visitors with disabilities to enjoy the full and equal benefit of the sidewalks and public rights of way.
33. Despite knowledge of Minnesota Vehicle Codes, the Scooter Defendants chose to carry out its business in the City of Minneapolis by appropriating public spaces and have allowed and continue to allow the use of the Scooters on the City's system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways, declining to employ geo-fencing or other available mechanisms to ensure that Scooters are used or reasonably maintained in a way that ensures full and equal access for people with disabilities to the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways



34. The combination of the City's failure to maintain the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways in compliance with the needs of disabled individuals, and the Scooter Defendants' knowing and reckless disregard for the need to maintain full and equal access to public walkways for people with disabilities, results in Plaintiffs suffering disproportionate harm based on their disabilities. The City's system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways is no longer readily accessible to and usable by persons with mobility and/or visual disabilities due to the pervasive, unregulated, and ever-growing presence of Scooters that create physical access barriers along the path of travel on the City's public walkways.
35. The Plaintiff and other persons with mobility or visual impairments must roll the dice every time they choose to use the system of sidewalks and other pedestrian rights of way, as they gamble as to whether the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways might be unfettered or instead that Plaintiffs might be blocked or themselves placed in danger by encountering Scooters strewn along their path. These obstructions deny people with disabilities access to the City's system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways and strip them of their freedom and their right to safely use the public sidewalk in the same fashion and with the same benefit as enjoyed by those without disabilities
36. The Plaintiff has mobility impairments. The Plaintiff has encountered Scooters strewn across, blocking, and/or being driven upon the system of public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways in the City of Minneapolis, denying him full and equal access based on disability, and, causing Plaintiff difficulty, frustration and embarrassment, and placing him in danger of injury or death. The Plaintiff continues to be deterred from leaving their homes and places of business since the invasion of these Scooters onto the streets of the City of Minneapolis.

37. The maintenance of an accessible system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways for people with disabilities go to the heart of the purpose of the ADA and other disability rights laws, and is essential for full integration into the community. The Scooter Defendants' private appropriation and exploitation of varying portions of public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways turning them into inaccessible places of public accommodation for their business use - and the Municipal Defendant's failure to ensure that the system of public walkways is kept accessible to persons with mobility or visual impairments free of Scooter obstructions - discriminates based on disability in violation of multiple federal and state disability rights laws. This lawsuit seeks to ensure fair, full, and equal access to the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways for all residents and visitors with disabilities in the Minneapolis.
38. The Plaintiff brings this action to, among other things, remedy violations of Title II of the ADA, 42 U.S.C. §12131, et seq., and its accompanying regulations, Title III of the ADA, 42 U.S.C. § 12182, et seq. and its accompanying regulations; the Rehabilitation Act and its accompanying regulations, as well as analogous state statutes MINN. STAT 363A. The Plaintiff seeks declaratory and injunctive relief pursuant to the above, as well as an award of attorneys' fees and costs under applicable law. The Plaintiff also seeks statutory damages under Minnesota law.

### **FIRST CAUSE OF ACTION**

#### **The Americans with Disabilities Act – Title II (Against Municipal Defendants)**

39. The Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.
40. Congress enacted the ADA upon finding, among other things, that "society has tended to isolate and segregate individuals with disabilities" and that such forms of discrimination continue to be a "serious and pervasive social problem." 42 U.S.C. § 12101 (a)(2).

41. In response to these findings, Congress explicitly stated that the purpose of the ADA is to provide  
“a clear and comprehensive national mandate for the elimination of discrimination against  
individuals with disabilities” and “clear, strong, consistent, enforceable standards addressing  
discrimination against individuals with disabilities.” 42 U.S.C. §12101(b)(1)-(2).
42. Title II of the ADA provides in relevant part: “[N]o qualified individual with a disability shall, by  
reason of such disability, be excluded from participation in or be denied the benefits of the  
services, programs, or activities of a public entity, or be subjected to discrimination by any such  
entity.” 42 U.S.C. § 12132.
43. At all times relevant to this action, the Municipal Defendant was a “public entity” within the  
meaning of Title II of the ADA and provided and provides a program, service or activity to the  
general public.
44. At all times relevant to this action, the Plaintiff was a qualified individuals with disabilities within  
the meaning of Title II of the ADA and met the essential eligibility requirements for the receipt of  
the services, programs, or activities of the City of Minneapolis. 42 U.S.C §12131.
45. Municipal Defendant is mandated to operate each program, service, or activity “so that, when,  
viewed in its entirety, it is readily accessible to and useable by individuals with disabilities.” 28  
C.F.R. § 35.150; see also 28 C.F.R. §§ 35.149 & 35.151. The system of sidewalks, crosswalks,  
transit stops, curb ramps, pedestrian crossings and other walkways themselves constitute an  
essential public service, program, or activity under Title II of the ADA. 28 C.F.R. § 35.104; see  
Barden v. City of Sacramento, 292 F.3d 1073 (2002).
46. The regulations implementing Title II of the ADA provide that a public entity must maintain the  
features of all facilities required to be accessible by the ADA. 28 C.F.R. § 35.133. Facilities  
required to be accessible include roads, walks and passageways. 28 C.F.R. § 1035.104.
47. The Plaintiff is informed, believes and thereon alleges that the system of sidewalks, crosswalks,  
transit stops, curb ramps, pedestrian crossings and other walkways are not fully, equally and  
safely accessible to Plaintiffs when viewed in their entirety.

48. The Plaintiff is informed, believes and thereon alleges that the Municipal Defendant violated and continues to violate the ADA by failing to ensure that the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways are kept free of the Scooter obstructions and thereby deny the Plaintiff due to his disability the benefits of the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways.
49. Plaintiff is informed, believes and thereon alleges that the Municipal Defendant failed and continues to fail to adopt, implement or enforce ordinances or other regulations necessary to ensure that the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways are kept free of the Scooter obstructions.
50. Plaintiff is informed, believes and thereon alleges that the Municipal Defendant and their agents and employees have and continue to violate the ADA by failing to timely respond to and remedy complaints about the said barriers through their policies and practices with regard the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways thereby denying disability access.
51. Plaintiff is informed, believes and thereon alleges that the Municipal Defendant committed the acts and omissions alleged herein with intent and/or reckless disregard of Plaintiffs' rights.
52. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and continue to suffer humiliation, hardship and anxiety, due to Defendants' failure to address accommodations, modifications, services and access required for Plaintiffs' disability.
53. Municipal Defendant's discriminatory conduct is ongoing, and causing continuing harm. Plaintiffs have no adequate remedy at law and are therefore entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 12133.
54. Plaintiffs are further entitled to reasonable attorneys' fees and costs incurred in bringing this action.

**SECOND CAUSE OF ACTION**

(The Rehabilitation Act) (Against Municipal Defendant)

55. Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs.
56. Section 504 of the Rehabilitation Act of 1973 provides in relevant part: “[N]o otherwise qualified person with a disability...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...” 29 U.S.C. § 794.
57. The Plaintiff is otherwise qualified to participate in the services, programs, or activities that are provided to individuals in the City of Minneapolis. See 29 U.S.C. § 794(b).
58. The Municipal Defendant is a direct recipient of federal financial assistance sufficient to invoke the coverage of Section 504 of the Rehabilitation Act and have received such federal assistance at all times relevant to the claims asserted in this Complaint.
59. Plaintiff is informed, believes and thereon alleges that the Municipal Defendant and their agents and employees have violated and continue to violate the Rehabilitation Act and the regulations promulgated thereunder by excluding Plaintiffs from participation in, denying Plaintiffs the benefits of, and subjecting Plaintiffs to discrimination in the benefits and services of the system of sidewalks, crosswalks transit stops, curb ramps, pedestrian crossings and other walkways for the reasons set forth above, based solely by reason of their disability.
60. Plaintiff is informed, believes and thereon alleges that the Municipal Defendant committed the acts and omissions alleged herein with intent and/or reckless disregard of Plaintiffs’ rights.
61. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and continue to suffer humiliation, hardship and anxiety, due to the Municipal Defendant’s failure to address accommodations, modifications, services and access required for the Plaintiff’s disabilities.
62. Municipal Defendant’s discriminatory conduct is ongoing. Plaintiffs have no adequate remedy at law and are entitled to declaratory and injunctive relief set forth in 29 U.S.C. §794(a) and the Civil Rights Act of 1964, 42 U.S.C. 2000d-7(2).

63. The Plaintiff is also entitled to reasonable attorneys' fees and costs incurred in bringing this action.

### **THIRD CAUSE OF ACTION**

#### **The Americans with Disabilities Act, Title III (Against Scooter Defendants)**

64. The Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.

65. Title III of the ADA provides in relevant part: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to) or operates a place of public accommodation." 42 U.S.C. § 12182(a).

66. Places of public accommodation are facilities operated by a private entity including a sales or rental establishment and a place of exercise and recreation. 42 U.S.C. § 12181 (7)(E) & (I); 28 C.F.R. § 36.104.

67. Discrimination under Title III includes a failure to remove barriers to access when the removal of a barrier is readily achievable. 42 U.S.C. § 12181(2)(a)(iv).

68. The ADA's broad protection against discrimination based on disability under Title III is not limited to clients or customers of the operator of a place of public accommodation. See *Molski v. Cable, Inc.*, 481 F. 3d 724 (9th Cir. 2007).

69. The Scooter Defendants have used and appropriated and continue to use and appropriate various portions of the City's public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossing and walkways, effectively turning them into their private retail stores, showrooms and storage facilities for their recreational dockless scooters business. The public walkways utilized by Scooter Defendants are therefore places of public accommodation covered by Title III of the ADA.

70. The Scooter Defendants have violated Title III of the ADA by discriminating against persons based on their disability as described herein and denying access to Scooter Defendants' facilities.

71. The Scooter Defendants' use and appropriation of portions of the City's public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and walkways for its business operations have created multiple barriers and hazards for Plaintiffs due to their mobility and/or visual disabilities making these walkways inaccessible to them, forcing Plaintiffs to risk their safety and well-being whenever they venture around the City and deterring them from leaving their home.
72. The removal of these barriers and hazards is readily achievable by Scooter Defendants but Defendants have failed and refused to remove or mitigate them.
73. The Plaintiffs is entitled to declaratory and injunctive relief pursuant to 42 U.S.C. § 12188(a).
74. The Plaintiff is further entitled to reasonable attorneys' fees and costs incurred in bringing this action.

#### **FOURTH CAUSE OF ACTION**

##### **(Violations of MINN. STAT. 363A.12) (Against Municipal Defendant)**

75. The Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.
76. The system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways are publicly funded service and intended for use by the public within the meaning of MINN. STAT. 363A.12
77. The Plaintiff is informed, believes and thereon alleges that the Municipal Defendant and its agents and employees have and continue to violate MINN. STAT. 363A.12. and regulations implemented pursuant thereto by operating the system of sidewalks, crosswalks, curb ramps, pedestrian crossings and other walkways in violation of disability access requirements, for the reasons set forth above.
78. The aforementioned acts and omissions of the Municipal Defendant constitute denial of equal access to and use of the system of sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and other walkways and caused the Plaintiffs to suffer deprivation of his civil rights.

79. As a direct and proximate result of the aforementioned acts, Plaintiff has suffered, and continues to suffer, humiliation, hardship and anxiety, due to the Municipal Defendant's failure to address accommodations, modifications, services and access required for Plaintiffs' disabilities.
80. The Municipal Defendant's discriminatory conduct is ongoing. There is no adequate remedy at law, and Plaintiffs are entitled to declaratory and injunctive relief.
81. Plaintiffs are also entitled to reasonable attorneys' fees and costs in filing this action.

#### **FIFTH CAUSE OF ACTION**

##### **(Violations of MINN. STAT. 363A.11) (Against Scooter Defendants)**

82. The Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.
83. MINN. STAT. 363A.11 states "It is an unfair discriminatory practice:(1) to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin, marital status, sexual orientation, or sex, or for a taxicab company to discriminate in the access to, full utilization of, or benefit from service because of a person's disability."
84. The Scooter Defendants have used and appropriated and continue to use and appropriate various portions of the City's public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossing and walkways, effectively turning them into their private retail stores, showrooms and storage facilities for their recreational dockless scooters business. The public walkways utilized by Scooter Defendants are therefore places of public accommodation within the meaning of MINN. STAT 363A.11
85. The Scooter Defendants have violated MINN. STAT. 363A.11 by discriminating against persons based on their disability as described herein and denying access to Scooter Defendants' facilities.
86. The Scooter Defendants' use and appropriation of portions of the City's public sidewalks, crosswalks, transit stops, curb ramps, pedestrian crossings and walkways for its business



operations have created multiple barriers and hazards for Plaintiffs due to their mobility and/or visual disabilities making these walkways inaccessible to them, forcing Plaintiffs to risk their safety and well-being whenever they venture around the City and deterring them from leaving their home.

87. The removal of these barriers and hazards is readily achievable by Scooter Defendants but Defendants have failed and refused to remove or mitigate them.
88. The Plaintiffs is entitled to declaratory and injunctive relief pursuant to MINN. STAT. 363A.11
89. The Plaintiff is further entitled to reasonable attorneys' fees and costs incurred in bringing this action.

**PRAYER FOR RELIEF**

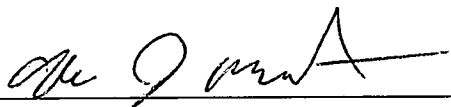
**WHEREFORE**, Plaintiff prays for judgment and relief against Defendants as Follows:

- A. For an order enjoining the Scooter Defendants from continuing to operate on the system of sidewalks, crosswalks, curb ramps, transit stops, pedestrian crossings and other walkways in the City of Minneapolis;
- B. For an order that this matter remain under this Court's jurisdiction until Defendants fully comply with the Orders of this Court;
- D. For an order requiring disgorgement of monies wrongfully obtained as a result of the Scooter Defendants wrongful and illegal conduct;
- E. For statutory damages arising from Defendants' wrongful and illegal conduct;
- F. For an award of reasonable attorneys' fees and all costs and expenses incurred in the course of prosecuting this action;
- G. For pre-judgment and post-judgment interest at the legal rate; and
- H. For such other and further relief as the Court deems just and proper

Respectfully Submitted,

Dated:

10/16/2019

A handwritten signature in black ink, appearing to read "Noah J. McCourt", is written over a horizontal line.

Noah J. McCourt

684 N. Otsego Street

Saint Paul, MN 55130

JS 44 (Rev. 06/17)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

McCourt, Noah J.

(b) County of Residence of First Listed Plaintiff Ramsey  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

## DEFENDANTS

City of Minneapolis Et al

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 424 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Tide XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(n)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

SCANNED

OCT 16 2019

U.S. DISTRICT COURT MPLS

## V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C 12101; 42 U.S.C 12182; 29 U.S.C 794

Brief description of cause:

barriers to access Public services Due to scooters

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/16/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.